

AUG 24 2004

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHRISTIAN EASTWOOD, a.k.a. Kristo M.
Springer,

Defendant - Appellant.

No. 03-10016

D.C. No. CR-01-00443-KJD

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Argued and Submitted October 8, 2003
Submission Vacated December 16, 2003
Submitted August 20, 2004
San Francisco, California

Before: PREGERSON, BEAM,** and PAEZ, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** Honorable C. Arlen Beam, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

We need not state the facts of this case as they are known to the parties. Although we conclude that the appellant was in custody, we find that his statement that he possessed guns was voluntarily made and was not the result of interrogation or other coercion. *See United States v. Allen*, 699 F.3d 453, 459 (9th Cir. 1982). Moreover, the guns were admissible because the exclusionary rule applicable to statements obtained in violation of *Miranda* does not extend to non-testimonial evidence that is seized as a result of unwarned, but voluntary, statements. *See United States v. Patane*, 124 S.Ct. 2620, 2630 (2004). Further, we conclude that the district court did not clearly err in determining that the appellant voluntarily consented to the search of his apartment. *See United States v. Morning*, 64 F.3d 531, 533 (9th Cir. 1995).

AFFIRMED.